

MINUTES OF MARION CITY COUNCIL
REGULAR MEETING 6:30 P.M.

COUNCIL CHAMBERS AT CITY HALL
TUESDAY, FEBRUARY 12, 2013

A regular meeting was held by City Council on February 12, 2013 at 6:30 p.m. over which Mayor Rodney Berry presided. Council members Bobby I. Davis, Michael Baker, Ronald Atkinson, Ralph Atkinson and Betsy Atkinson were present. Councilwoman Odessa Gregg was not present due to attending an MASC meeting in Columbia. Also present were Mr. Alan Ammons, Mrs. Patricia Brown, Ms. Pam Jones, and Attorney Robert Lee.

Mayor Berry called the meeting to order and gave the opening prayer. Mr. Ammons led the Pledge of Allegiance. Mayor Berry welcomed all guests and the press (Hometown TV).

Councilwoman Betsy Atkinson made a motion to approve the minutes from the regular meeting on January 8, 2013, seconded by Councilman Ralph Atkinson. Councilman Bobby Davis asked that the minutes from the meeting on December 11, 2012 reflect that he voted **no** on the City Administrator's Agreement, to which City Clerk Pam Jones stated that it had been corrected. The motion carried.

Councilman Michael Baker made a motion to set the Annual City Dinner/Awards for Tuesday, March 19 at 7:00 p.m., seconded by Councilman Bobby Davis. Motion carried.

Councilman Bobby Davis made a motion for a Resolution from the Marion City Council to recognize Mr. John W. Hughes, new President of the South Carolina School Board Association, seconded by Councilman Michael Baker; motion carried.

Councilman Ralph Atkinson made a motion to allow the FoxTrot festival use of the CD Joyner parking lot on May 16, 17, and 18, free of charge, seconded by Councilwoman Betsy Atkinson; motion carried.

Mr. Lee Phillips gave a presentation on a summer youth camp, which will include a basketball program, mentoring, reading and nutrition, that he wants to bring to the City of Marion this summer and asked for the City to donate \$1,500. Mayor Berry commented that he met with Russ (Smith) and Billy (Thompson) at the Recreation Department and they are very much in favor of this program. Councilwoman Betsy Atkinson made a motion to give Mr. Phillips \$1,500, seconded by Councilman Michael Baker; motion carried.

Regarding the Budget Transfer within the Recreation Department, Mr. Ammons asked that \$5,000 be transferred from pool maintenance to maintenance of the Green Street

ball fields and the football field. Councilman Baker asked that the track field at Grice's and the parking in that area be looked at. Also, the opening of the playground equipment had been put off because it was supposed to be done in August or September. Mr. Ammons responded that he would talk with the County again regarding this and that the County had previously dumped 18 loads of dirt in that area. Mayor Berry expressed concern over the area at Grice's with the sinkhole, to which Mr. Ammons commented that DOT would supply the City with metal pipes to fix this, and the City would do the repairs. City Councilman Ralph Atkinson made a motion to

transfer the funds as requested by Mr. Ammons, seconded by Councilwoman Betsy Atkinson; motion carried.

Mr. Ammons stated that Council needed to set a Public Hearing on **Ordinance 13-01 - Fireworks**, to amend the dates and times fireworks are allowed to be discharged in the City. Councilman Ralph Atkinson made a motion to hold the Public Hearing at 6:15 p.m. before the regular meeting on March 12, 2013, seconded by Councilwoman Betsy Atkinson; motion carried. The notice for the Public Hearing will be placed in the Star/Enterprise on February 27th and March 6th.

Regarding the Stormwater RFP-RFQ, Mr. Ammons commented that the three vendors who presented their Stormwater package would be given a full 30 days to present a proposal to Council for their review. Councilwoman Betsy Atkinson made a motion to proceed with the Stormwater RFP-RFQ, seconded by Councilman Ronald Atkinson; motion carried.

Councilman Bobby Davis commented that he wished he did not have to discuss what he was going to discuss, and could have been avoided. Councilman Davis stated that Mr. Ammons went to his house on January 14th in reference to some signs and told him the signs were up approximately 20 days early. Councilman Davis replied, "That's no problem, if you said we need to take them down, we will take them down, no problem at all on that because I am a man of integrity and I believe in doing what's right, even though that Ordinance came out of this book (Planning & Zoning Ordinance), not our regular Ordinance book. We don't need any more controversy, we do not need any more controversy that's going on in Marion, we don't need any more confusion because we have enough in Marion."

Councilman Davis then stated, "We have the lawsuit going on with Chief Smith." Mayor Berry apologized for interrupting in order to ask Attorney Lee about mentioning names and personnel being out of bounds in Open Session which is why it is designated for Executive Session, to which Attorney Lee responded that we all know there's a lawsuit with Chief Smith, but the details of that lawsuit, which is a personnel matter, do have to be discussed in Executive Session. Councilman Davis stated, "We don't need any more confusion with this lawsuit on-going by Chief Smith with the Mayor. We already had people, we were told, at least three people to testify before the Grand Jury about the last election (2009) for voter's fraud and possibly corruption and other things, so we don't need any more confusion in Marion". Councilman Davis was hand-delivered a letter by Dennis Brown from Mr. Ammons regarding taking down the signs, which he found peculiar as he had already told Mr. Ammons he would take the signs down. Councilman Davis commented that he was contacted for an interview regarding the sign issue by Andrew Golden from the Star/Enterprise and told Mr. Golden "I don't need to talk about signs because we are going to take care of that. Mr. Ammons said they were up early, although it had never been enforced in this city in over 25 years; I have no problem following the ordinance. Mr. Andrew this is not about signs, this is about you writing a negative story pertaining to signs". Councilman Davis took Mr. Golden to a property in Marion that had the Mayor's signs up and had been up for 4 years, whereas his had only been up for 4 days (both being on private property).

Councilman Davis received a copy of the ordinance from Mr. Ammons which pertained to the 60 days and also the 7 days after the election in which the signs must be taken down. Councilman Davis commented that a copy of this ordinance should have been placed in the packet from the Voter's Registration office because the City is responsible for the City elections even though we ask the County to take care of it for us. It was reported in the paper that the Mayor agreed that this should have been included in the packet.

Councilman Davis further commented that when questioned by some residents as to why his signs had to come down when the Mayor's signs were still up from 4 years ago, he consulted his attorneys who informed him that if the ordinance was questioned and sent to the Justice Department they would probably rule it unconstitutional due to the First Amendment's right to freedom of speech. Councilman Davis was informed that he could ask for an injunction to stop everything they were trying to do, but he did not want to do that, that is not him and he wants to go ahead and comply with what we have because as a Council we did sign this some years ago. Councilman Davis stated that we usually allow the attorneys to handle the Planning & Zoning because most of us on this Council know very little to nothing about this Planning & Zoning. Councilman Davis commented that his legal advisors told him that this attempt to have him take down his signs and the Mayor's signs still up was an easy case, but said no, we would not fight anymore in Marion about something like this. We need to move forward. In an interview with Ms. Tonya Brown (WPDE), Councilman Davis answered some questions and told her he thought one thing we should improve on was to treat everyone fair. Councilman Davis commented that he spoke to Mr. Ammons and said that we should be going through all of this, that it didn't look good for us to be talking about signs and creating more confusion and problems in the City when we still have a lawsuit going on denying the Chief a dime in severance pay and we just approved a \$140,000 severance package for someone who has been on the job training for 3 1/2 years and that wasn't right. Councilman Davis still believes we shouldn't cause any problems in Marion that we don't have to cause.

We should be about trying to help each other and work together and bring this community back together. We need unity in Marion; we don't need a lot of problems and division about something as simple as a sign because it is just going to cause more problems. Councilman Davis then commented that after all this, 2 weeks later on January 28th, he picked up another certified letter at the post office and it contained the same letter and the same ordinance regarding the signs. Councilman Davis stated that there was a lot of confusion over the signs that wasn't necessary, but it is taken care of and the signs are back up. Councilman Davis commented that he told Mr. Ammons that if are going to enforce this ordinance in section 302, that talks about the Historic District of our City, a building was painted without anyone's knowledge. Even after the Commission found out, nothing was done. Councilman Davis further stated that even if they didn't want to do anything about this ordinance, the City had an obligation to do something about it because no one can paint a building without a permit. The permit was not issued and no letter

was written and when the letter was written about the Mayor's signs, it didn't go to the Mayor, it went to the property and the letters regarding Councilman Davis's signs were sent to him and not to the property owner. Councilman Davis stated, "We've got to be fair, people. We've got to treat everybody fair and we've got to get away from this stuff creating problems when there is no problem in our City. With that said, I will leave it there for right now, but we are responsible for putting this in the package. It was not put in the candidate's package and this would have cut down on a lot of confusion for them because we should be the ones telling someone if you're going to enforce something like this. Now the part about taking up signs, 7 days after, that's fine. We know you're not supposed to put them on the right-of-way, even though I was told by these legal advisors that could be questioned and we need to look at all these ordinances that we have. And the reason this could be questioned about the right-of-way is because the City doesn't own the street. Ninety to 95% are owned by the State and if the State said you could do it, we don't have authority to override the State, unless they say we could do it". Councilman Davis had Mr. Ammons pull an ordinance that says it is against the law to spit on a sidewalk in Marion, which shows that we have ordinances that need to be addressed by the Administrator, Mayor and Council.

ADMINISTRATOR'S REPORT

Regarding updating our Emergency Operations Plan, Mr. Ammons has been in contact with Mr. Ellis with the County and he has graciously agreed to assist in updating our plan.

Regarding Grice's pool, Mr. Ammons, Russ Smith, engineers and a representative from DHEC met at the pool. DHEC has agreed to let us go to Columbia to present the plans I order to expedite the pool. DHEC has to pre-approve the plans before it can be bid out and we hope to have something ready in couple of weeks for DHEC's approval. We will keep moving forward and keep Council apprised of the progress.

We are in the process of updating our Municipal Code books, which has not been done in 6 or 7 years. Pam will notify you when the books need to be picked up, insert the new pages and have them returned to you.

Mayor Berry commented that Mr. Ammons has a stress fracture and has been coming in, and appreciates his commitment.

Corporal Anthony Bacchus of the Police Department was named January *Employee of the Month* and presented with a gift certificate which has now been increased to \$100.

CITY ATTORNEY'S LEGAL UPDATE

Attorney Robert Lee had no comment at this time.

DEPARTMENTAL REPORTS

Mayor Berry commented that all Departmental Reports were sent in Council's packets. Chuck Wiegert reminded everyone that General Francis Marion Days would be celebrated the last weekend in February. The Hugh Giles Regiment re-enactors would set up camp beside the library and give demonstrations all weekend. The Runfest and Chili Cook-off would be held on Saturday,

February 23, with the Runfest starting at 9:00 a.m. at the Opera House and the Chili Cook-off at noon in front of Pee Dee Federal.

**ACCOUNTABILITY OF CITY OFFICIALS/COMMENTS FROM COUNCIL AND
MAYOR**

Councilman Baker asked Mr. Ammons about speed limit signs on the streets that lead to Johnakin (Georgetown, Strawberry, Simmons, Euclid), to which Mr. Ammons responded that he had talked to Mr. Coleman at SCDOT who is going to check on that. Councilman Baker noted that where there are no signs posted, the speed limit is 35 and people fly down those streets like there are no children around.

Mayor Pro-tem Ronald Atkinson had no comment at this time.

Councilman Bobby Davis stated that the lights at the corner of Church Street and

Bobby L. Davis Blvd.

have not been repaired and it has been 4 months since it was reported. The area is dark and several break-ins have occurred in that area. Mr. Ammons responded that he would take care of that first thing in the morning.

Councilman Ralph Atkinson had no comment at this time.

Councilwoman Betsy Atkinson had no comment at this time.

Mayor Berry commented that he was not aware of one of his signs that still remained in a gentleman's yard. He then commented that the Council before him signed the ordinance to take the signs down and one that he completely agrees with. There are hundreds of signs that are picked up by the City for improper placement, and whoever the signs belong to are encouraged to come pick them up. Mayor Berry stated that calling the media would have been the last thing he would have done and he agrees that we don't need any bad news in Marion, but his observation is that it seems to be coming from the same place. Mayor Berry stated, "The lawsuit is against the City of Marion, it is not against Rodney Berry. Furthermore, and these are the half truths I speak about, as reflected in our minutes on October 18, 2010 (and will be made available to anybody) and on January 11, 2011, you heard there was no compensation, no package given to the former Chief. In fact, there were two offers. This documents it and Pam, I want you to make sure this available to all citizens because we've heard twice now there was no severance package offered and we indeed voted on it and it was extended, so that was simply untrue." Mayor Berry commented to Councilman Davis that we would give him the opportunity to respond.

Mayor Berry stated that he had spoken with Ms. Dionne Vance regarding computer classes. He would like for Council to look over her program and discuss at the next meeting.

Mayor Berry thanked RALI for the Gospel Singing fundraiser at CD Joyner held for the benefit of the Boys' and Girls' Club.

Mayor Berry encouraged everyone to come out for the General Francis Marion weekend and take part in the activities.

In his response to Mayor Berry's earlier comments, Councilman Davis stated, "The City of Marion has been misled so much about deceptions, in terms of Chief Smith. What I'd like for each citizen to do is don't ask me, ask Chief Smith what they're trying to do now in the courts with him. This person, he says he's not being sued, he's being sued individually and the City. The Mayor is being sued according to the lawsuit and they're also suing the City, but he is being sued individually for racial discrimination and violating his rights and violating the medical leave act. This is an open meeting and you can't stop us from telling the truth. I know you would like to". Mayor Berry stated, "That's not my desire, truth prevails." Councilman Davis further stated, "He's being sued for racial discrimination, he's being sued for violation of the Federal Medical Leave Act, because he fired Chief Smith while he was on medical leave right out of the hospital. Folks, you need to know the truth and I'm here to tell you the truth and all this stuff about half truths, if you think I'm not telling you the truth, ask Chief Smith himself. He may not be able to tell you everything, or come see me, since its public information now. We had depositions and I will give you a copy of it." Mayor Berry commented that he would be happy for anybody to get a copy of that as he has nothing to hide from.

PUBLIC COMMENTS

Ms. Pamela McRae was unable to give her comments at this time.

EXECUTIVE SESSION

Councilman Ralph Atkinson made a motion to enter Executive Session to discuss a personnel matter in regards to the custodial position, seconded by Councilman Bobby Davis; motion carried.

Mayor Berry stated that no action was taken in Executive Session. Councilwoman Betsy Atkinson made a motion to enter Open Session, seconded by Councilman Ralph Atkinson; motion carried.

Mr. Ammons requested a budget adjustment for the custodial position which Councilman Michael Baker made a motion to accept, seconded by Councilwoman Betsy Atkinson; motion carried.

Councilman Baker requested that Council receive a copy of the monthly events calendar from the Opera House and the Recreation Department. Mr. Ammons responded that would be taken care of.

ADJOURNMENT

With no further business, Councilwoman Betsy Atkinson made a motion to adjourn, seconded by Mayor Pro-tem Ronald Atkinson; motion carried.

Mayor Rodney Berry City Clerk Pam Jones

Taped February 12, 2013